IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.601 OF 2005

Shri Digambar Shripati Waghmode .. Appellant

Versus

Mrs.Rekha Rajkumar Pandhare & Anr. Respondents

Mr.P.B. Shah for appellant

Mr.Sandeep S.Salunkhe with Prashant D.Patil for respondents

CORAM : P.V.KAKADE, J.

DATE : 27TH JUNE, 2005.

P.C.:

1. This is an appeal preferred by the appellant against the Judgment and Order passed by Addl. District Judge, Pandharpur dated 19.11.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Senior Division, Pandharpur dismissing the suit of the plaintiff for specific performance of the contract holding that the suit transaction was illegal, void and ab-initio and further directed refund of the earnest amount.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff had filed the suit to obtain specific performance of the contract to sell an agricultural land to him from the defendant nos.1 and 2 pertaining to land Gat No.204 admeasuring 5 Hector 15 R situated at Namatwadi, Tal. Pandharpur, Dist.Solapur. It was the case of the plaintiff that defendant no.1 put on sale the suit land in order to bear her house hold expenses. Plaintiff decided to purchase the suit land and it was agreed that the suit land would be sold by the defendant No.1 for consideration of Rs.1,40,000/=. An amount of Rs.35,000/= was paid at the time of execution of the suit agreement dated 10.12.1991 and part payments were made thereafter. The moot question around which the fact is revolved that the defendant no.1 was minor at the time of execution of the suit agreement. Both the courts below, on the basis of evidence on record, have concluded that the defendant no.1 was minor and as such was not capable to enter into contract as contemplated under Section 11 of the Contract Act. The evidence led on behalf of the

defendant No.1 while contesting the suit was held sufficient to show that the defendant no.1 was born on 15.12.1975 and attained majority on 15.12.1993. Whereas the part payments received on her behalf were prior to attaining her majority. The counsel for the appellant vehemently urged that since payments were accepted after attaining the majority, it is case for ratification of contract and therefore, the contract would be voidable on the concerned parties. However, it is clear from the record that the contract is not only voidable but void ab-initio by virtue of Section 11 of the Contract Act. The learned advocate for the appellant sought to put reliance on the ruling of the Nagpur Bench of this Court in the case of **Jiyauddin Muniroddin & Ors. vs. Pradeepkumar Baijnath Nawabasi** reported in **2002 (3) All M.R.846**. However, perusal of the said ruling shows that the said ruling is not applicable to the present case and as well as law, and therefore, cannot be of any help to the appellant.

4. Be as it may, the fact remains that there is no substantial question of law involved. There is absolutely no perversity in appreciation of the evidence by the lower appellate court and as such in my view the

appeal has no merits. In the result the appeal stands dismissed with no order as to costs.